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United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANTONIO MENDOZA RAMOS,
LEOPOLDO GONZALEZ, JR.,
VICTOR MANUEL VELAZQUEZ,
ERASMO ZARATE SOLORZANO,
ESTELA ACEVEDO,
CARLOS CANO MANZO,
DIANA CERVANTES,
JOSE GENARO VARGAS-RAMIREZ,
ALMA ADRIANA MORA MADRIGAL,
ALEJANDRO MORA MADRIGAL,
FERNANDO CARDENAS, AND
HUMBERTO PIMENTEL CARANZA,

Defendants.

CASE NO. 21-CR-109-DAD

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
ORDER

CURRENT DATE: December 13, 2022
PROPOSED DATE: March 14, 2023
COURT: Hon. Dale A. Drozd

BACKGROUND

This case was set for status conference on December 13, 2022, and time has been excluded through that date. Dkt. 147. On May 26, 2021, this Court issued General Order 631, which reopened the courthouses in this District, but which left it to “each Judge [to] determine whether to hold proceedings . . . in person or by telephone or videoconference.” The order further authorized each Judge to “exercise his or her authority to continue [criminal] matters” and “exclud[e] time under the Speedy

1 Trial Act.” This and previous General Orders were entered to address public health concerns related to
 2 COVID-19.

3 Although the General Orders address the district-wide health concern, the Supreme Court has
 4 emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive
 5 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.
 6 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no
 7 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
 8 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 9 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally
 10 or in writing”).

11 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 12 and inexcusable—General Orders 611, 612, 617, 618, and other orders require specific supplementation.
 13 Ends-of-justice continuances are excludable only if “the judge granted such continuance on the basis of
 14 his findings that the ends of justice served by taking such action outweigh the best interest of the public
 15 and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is
 16 excludable unless “the court sets forth, in the record of the case, either orally or in writing, its reason or
 17 finding that the ends of justice served by the granting of such continuance outweigh the best interests of
 18 the public and the defendant in a speedy trial.” *Id.*

19 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
 20 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 21 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 22 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 23 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
 24 recognized that the eruption created “appreciable difficulty” for the trial to proceed. *Id.* at 767-69; *see*
 25 *also United States v. Correa*, 182 F. Supp. 2d 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time
 26 following the September 11, 2001 terrorist attacks and the resultant public emergency).

27 The coronavirus poses a similar, albeit more enduring, “appreciable difficulty” to the prompt
 28 proceedings mandated by the statutory rules. Recently, the Ninth Circuit enumerated a “non-

exhaustive” list of seven factors it found to be “relevant” in considering ends-of-justice Speedy Trial Act continuances “in the context of the COVID-19 pandemic.” *United States v. Olsen*, 21 F.4th 1036, 1046 (9th Cir. 2022). That non-exhaustive list includes: (1) whether a defendant is detained pending trial; (2) how long a defendant has been detained; (3) whether a defendant has invoked speedy trial rights since the case’s inception; (4) whether a defendant, if detained, belongs to a population that is particularly susceptible to complications if infected with the virus; (5) the seriousness of the charges a defendant faces, and in particular whether the defendant is accused of violent crimes; (6) whether there is a reason to suspect recidivism if the charges against the defendant are dismissed; and (7) whether the district court has the ability to safely conduct a trial. *Id.*

In light of the foregoing, this Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant LEOPOLDO GONZALEZ, JR. by and through his counsel of record, Ryan Roth, defendant VICTOR MANUEL VELAZQUEZ, by and through his counsel of record, Kelly Babineau, defendant ERASMO ZARATE SOLORZANO, by and through his counsel of record, Etan Zaitso, defendant ESTELA ACEVEDO, by and through her counsel of record, Clemente M. Jimenez, defendant DIANA CERVANTES, by and through her counsel of record, Jennifer Mouzis, defendant JOSE GENARO VARGAS-RAMIREZ, by and through his counsel of record, Dina Lee Santos, defendant ALMA ADRIANA MORA MADRIGAL, by and through her counsel of record, Christina Ann-Marie Diedoardo, defendant HUMBERTO PIMENTEL CARANZA, by and through his counsel of record, Jesse Garcia, and defendant FERNANDO CARDENAS, by and through his counsel of record, Tasha Chalfant, hereby stipulate as follows:

¹ The parties note that General Order 612 acknowledges that a district judge may make “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D. Cal. March 18, 2020).

1 1. By previous order, this matter was set for status conference on December 13, 2022.

2 2. By this stipulation, defendants now move to continue the status conference until March
3 14, 2023, and to exclude time between December 13, 2022, and March 14, 2023, under 18 U.S.C.
4 § 3161(h)(7)(A), B(ii), (iv) [Local Codes T2 and T4].

5 3. The parties agree and stipulate, and request that the Court find the following:

6 a) The government has produced over 100,000 pages of discovery and voluminous
7 audio and audio/video discovery, including interceptions over multiple wiretapped telephones as
8 well as recordings of controlled purchases of narcotics. Many of the recordings are in Spanish.

9 b) Counsel for defendants desire additional time to consult with their clients, review
10 the current charges, conduct investigations and research related to the charges, review discovery,
11 discuss potential resolutions, prepare pretrial motions, and otherwise prepare for trial.

12 c) Additionally, given the voluminous discovery and the fact that this case involved
13 a multi-line wiretap investigation, it is so complex that it is unreasonable to expect adequate
14 preparation for pretrial proceedings or for the trial itself prior to December 13, 2022.

15 d) Counsel for defendants believe that failure to grant the above-requested
16 continuance would deny them the reasonable time necessary for effective preparation, taking into
17 account the exercise of due diligence.

18 e) No defendant has invoked his/her speedy trial rights since the inception of the
19 case.

20 f) The government does not object to the continuance.

21 g) Based on the above-stated findings, the ends of justice served by continuing the
22 case as requested outweigh the interest of the public and the defendants in a trial within the
23 original date prescribed by the Speedy Trial Act.

24 h) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
25 et seq., within which trial must commence, the time period of December 13, 2022 to March 14,
26 2023, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(ii), (iv) [Local
27 Codes T2 and T4] because it results from a continuance granted by the Court at defendants'
28 request on the basis of the Court's finding that the ends of justice served by taking such action

1 outweigh the best interest of the public and the defendants in a speedy trial.

2 4. Counsel for ALMA ADRIANA MORA MADRIGAL and the government agree that for
3 purposes of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial
4 must commence, the time period of September 19, 2022, to December 13, 2022, inclusive, is deemed
5 excludable pursuant to 18 U.S.C. § 3161(h)(3) because ALMA ADRIANA MORA MADRIGAL's
6 whereabouts are unknown and her whereabouts cannot be determined by due diligence. On June 9,
7 2021, defendant ALMA ADRIANA MORA MADRIGAL was ordered to remain on Pretrial Release
8 conditions previously ordered in the Central District of California. Dkt. 13. On December 21, 2021, the
9 Honorable Jeremy D. Peterson signed a Pretrial Release Violation Petition and issued a bench warrant
10 for ALMA ADRIANA MORA MADRIGAL. The Petition alleged that:

11 On December 16, 2021, the supervising pretrial services officer in
12 the Central District of California notified Pretrial Services in the
13 Eastern District of California that all attempts to locate the
14 defendant have been unsuccessful, which included a home visit.
15 On December 17, 2021, this officer contacted defense counsel,
16 who advised the defendant has broken off contact with their office
17 and they are unable to reach the defendant. All efforts to locate the
18 defendant have been unsuccessful and the defendant's current
19 whereabouts is unknown.

20 Consequently, the government and counsel for ALMA ADRIANA MORA MADRIGAL agree
21 and ask the Court to find that defendant be considered unavailable because her whereabouts are
22 unknown and her whereabouts cannot be determined by due diligence.

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5. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: November 22, 2022

PHILLIP A. TALBERT
United States Attorney

/s/ AARON D. PENNEKAMP
AARON D. PENNEKAMP
Assistant United States Attorney

Dated: November 22, 2022

/s/ RYAN ROTH per email
authorization
RYAN ROTH
Counsel for Defendant
LEOPOLDO GONZALEZ, JR.

Dated: November 22, 2022

/s/ KELLY BABINEAU per
email authorization
KELLY BABINEAU
Counsel for Defendant
VICTOR MANUEL
VELAZQUEZ

Dated: November 22, 2022

/s/ ETAN ZAITSU per email
authorization
ETAN ZAITSU
Counsel for Defendant
ERASMO ZARATE
SOLORZANO

Dated: November 22, 2022

/s/ CLEMENTE M. JIMENEZ
per email authorization
CLEMENTE M. JIMENEZ
Counsel for Defendant
ESTELA ACEVEDO

1 Dated: November 22, 2022

/s/ JENNIFER MOUZIS per
email authorization

JENNIFER MOUZIS
Counsel for Defendant
DIANA CERVANTES

5 Dated: November 22, 2022

/s/ DINA LEE SANTOS per
email authorization

DINA LEE SANTOS
Counsel for Defendant
JOSE GENARO VARGAS-
RAMIREZ

9 Dated: November 22, 2022

/s/ CHRISTINA ANN-MARIE
DIEDOARDO per email
authorization

CHRISTINA ANN-MARIE
DIEDOARDO
Counsel for Defendant
ALMA ADRIANA MORA
MADRIGAL

15 Dated: November 22, 2022

/s/ JESSE GARCIA per email
authorization

JESSE GARCIA
Counsel for Defendant
HUMBERTO PIMENTEL
CARANZA

19 Dated: November 22, 2022

/s/ TASHA CHALFANT per
email authorization

TASHA CHALFANT
Counsel for Defendant
FERNANDO CARDENAS

23 **ORDER**

24 IT IS SO ORDERED.

25 Dated: November 23, 2022

26 
UNITED STATES DISTRICT JUDGE